

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TODD BIGELOW,
Plaintiff,
- against -
BARSTOOL SPORTS, INC.
Defendant.

Docket No. 17-cv-6298
JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Todd Bigelow (“Bigelow” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Barstool Sports, Inc., (“Barstool” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of the Erin Hills Golf Course, owned and registered by Bigelow, a Los Angeles based photojournalist. Accordingly, Bigelow seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or are transacting business in New York and is registered to do business in the State of New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Bigelow is a professional photojournalist in the business of licensing his Photograph for a fee, having a usual place of business at 24121 Welby Way, West Hills, CA 91307. Bigelow's work has appeared in galleries around the world and in collections at the California Museum of Photography, Oakland Museum of California and the Newseum in Washington DC.

6. Upon information and belief, Barstool is a foreign business corporation duly organized and existing under the laws of the State of New York, with a place of business at 13-15 West 27th Street, New York, New York 10001. Upon information and belief, Barstool is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Barstool has owned and operated a website at the URL: www.BarstoolSports.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. Bigelow photographed the Erin Hills Golf Course in Wisconsin during the US Open (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Bigelow is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph is registered with the United States Copyright Office and was given registration number VA 2-056-126.

B. Defendant's Infringing Activities

10. Upon information and belief, Barstool ran an article on the Website entitled *The Erin Hills Show; A Full U.S. Open Preview*. See <http://www.barstoolsports.com/boston/the-erin-hills-show-a-full-u-s-open-preview/>. The article prominently featured the Photograph on Barstool's web servers. A screen shot of the Photograph on the Website is attached hereto as Exhibit B.

11. Barstool did not license the Photograph from Plaintiff for its Website, nor did Barstool have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST BARSTOOL)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

13. Barstool infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Barstool is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Barstool have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Barstool be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
August 19, 2017

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